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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/681,592	10/09/2003	Alex William Ciavola		7172

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EXAMINER

OKEZIE, ESTHER O

ART UNIT PAPER NUMBER

3654

DATE MAILED: 11/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/681,592

**Applicant(s)**

CIAVOLA, ALEX WILLIAM

**Examiner**

Esther O. Okezie

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 1-10 rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

The claim(s) are narrative in form and replete with indefinite and functional or operational language. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

2. Regarding claim 1 the combination of method and apparatus claims is confusing and does not conform to consistent claim language. It is unintelligible whether the specific method of using the "ring bag" device or the "ring bag" device consisting merely of a ring, a bag, and a belt clip is claimed.

3. Regarding claim 2 the wording, "... which is easy to reload in ten seconds during the walk, if needed" does not conform to consistent claim language. What is being

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claimed is unintelligible. If easy ability to reload is a function of the "ring bag" device then the applicant should claim the apparatus that enables the bag to be easily reloaded not commentary on the bag.

4. Regarding claim 3 it is unclear exactly what the applicant is attempting to claim. The wording "The ring bag will remain in place where it is positioned behind and under the dog. The flat profile of the ring bag avoids any contact with the dog. The presence of the ring bag is unnoticeable and does not frighten or distract the dog while it is defecating." The applicant is merely describing attributes of the "ring kit" device and failing to claim the apparatus for which patent protection is sought.

5. Regarding claim 4 the applicant has initially claimed a 10-inch steel ring and then broaden this claim stating, "Also, under this patent, I also reserve the option to use different size steel rings in the ring kit, if the need should develop in the future. The concept of the ring bag would be the same." This is completely inconsistent claim language. Furthermore, A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question

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or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 4 recites the broad recitation "different size steel rings", and the claim also recites "10-inch diameter steel ring" which is the narrower statement of the range/limitation. Also it is unclear which dimension 10-inches is referring to. Whether this dimension refers to the diameter, radius, or circumference is unknown.

6. Regarding claim 5 the wording "...which is sufficient weight to hold the bag flat on the ground, where it is placed behind the dog, and to withstand wind currents of up to 25 mph" again does not conform to consistent claim language. It is unclear exactly what the applicant is attempting to claim.

7. Regarding claim 6 printed subject matter such as "specific instructions and helpful hints" is unpatentable. The applicant is advised to seek a copyright in this instance rather than a patent for this printed subject matter.

8. Regarding claim 7 the wording "The size and shape of the gusseted plastic bags have tested functionally as the optimum size and shape for the ring kit that uses the 10-

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inch ring" does not conform to consistent claim language. It is unclear what the applicant is attempting to claim.

9. Regarding claim 8 a narrow range limitation followed by a broad range limitation of the color of the plastic bag renders this claim indefinite: see above response to claim 4.

10. Regarding claim 9 the combination of method and apparatus claim is confusing and does not conform to consistent claim language. It is unintelligible whether the specific method of using the belt clip or the belt clip itself is claimed.

11. Regarding claim 10 printed subject matter such as "Special Instructions and Helpful Hints" is unpatentable. The applicant is advised to seek a copyright in this instance rather than a patent for this printed subject matter.

In so far as the claims can be understood, the prior art is applied as follows

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sieval.

13. Regarding claim 1-4 Sieval discloses a disposable plastic bag (figures 4-9; column 1, line 13) and a metal frame (figures 1-3; column 1, line 15). It is not clear whether Sieval discloses the frame is chrome plated or 10 inches in diameter because the patent is written in Dutch. Chrome plating is an old and well-known method of providing corrosive resistant coating. The size of the ring would be an obvious matter of design choice. The size would be chosen to be optimized depending on the use of the ring. It is noted that the applicant has later modified the choice in size to include any size later within claim 4. It would have been obvious to one of ordinary skill in the art to chrome plate the ring of Sieval to provide a corrosive resistant coating. Also, it would have been obvious to one of ordinary skill in the art to make the ring of Sieval 10-inches or any size required so that the ring would be the size needed for use.

14. Regarding claim 5 Sieval does not disclose neither the weight nor gauge of the metal frame. The gauge and weight of the steel would be dependent on how sturdy the ring needed to be. It would have been obvious to one of ordinary skill in the art to use a 9-gauge steel ring of 2.5 ounces to make the ring as sturdy as required.

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15. Regarding claim 6 Sieval does not disclose the addition of a steel belt clip and 12 plastic bags. However, a steel belt clip is old and well known as an apparatus that aids in holding an object. Furthermore, Sieval discloses a plastic bag that would suggest eleven more bags of the same type could also be included. It would have been obvious to one of ordinary skill in the art to add a steel belt clip to the device of Sieval to aid in holding it. Also, it would have been obvious to one of ordinary skill in the art to have added additional bags in case they are needed.

16. Regarding claim 7 and 8 it is not clear if Sieval discloses the dimension of the plastic bag. One would choose a bag that is the size and material needed for the intended use. It would have been obvious to one of ordinary skill in the art to make the bag of Seival any size and material depending on the intended use.

17. Regarding claim 9 Sieval does not disclose a 3X5/8 inch, flat, folded steel belt clip. It would have been obvious to one of ordinary skill in the art to add a steel belt clip to the device of Sieval and make it any size, shape, or material depending on the intended use.

18. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention



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disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US-5222777, JP-2002142596, US-6702349, JP-200204507.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther O. Okezie whose telephone number is (703) 305-0433. The examiner can normally be reached on Mon-Fri 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Katherine A Matecki can be reached on (703) 308-2688. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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